

Report to the Council Housebuilding Cabinet Committee



**Epping Forest
District Council**

Report reference: CHB-001-2017/18
Date of meeting: 29 January 2018

Portfolio: Housing – Cllr S. Stavrou

Subject: Delivery of future phases of the House-building Programme

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Recommendations:

- (1) That, following the decision made by East Thames to terminate its contract after 4-years as the Council's Development Agent, the Cabinet Committee notes the approach now being taken to deliver the future phases of the house-building programme; and
- (2) That the contract with Pellings LLP, who are currently in contract with East Thames and (for which the Council has a Collateral Warranty in place) be novated to Epping Forest District Council and the existing building contracts with the Contractors for Phases 1, 2 and 3 be amended to remove reference to East Thames.

Reasons for Proposed Decision:

East Thames were appointed following a competitive EU tender exercise to act as the Council's Development Agents on the Council House-building Programme. The appointment was for 4-years with the option to extend by a further 3-years. However, after 4-years, East Thames have decided to exercise the exit clause in the contract and terminate their appointment giving 6-months' notice. This has led to the Council having to act quickly to put in place an alternative delivery model for future phases. This report sets out that approach, and is for noting at this stage.

Other Options for Action:

1. To re-tender and appoint another Development Agent to replace East Thames.
2. To employ the relevant resources in-house to deliver the programme directly.

Background

1. In September 2017, East Thames, who are the Council's Development Agents, gave notice of their intention to invoke Schedule 8 (Exit Management Plan) of the Housing Development Agency Services Agreement that they no longer wish to act as Development Agents on behalf of the Council. Whilst a 3-month exit management term is set out in the Agreement, East Thames have agreed to extend this term to 6-months, ending on 9 March 2018 to enable as smooth a hand-over as possible.

2. To back-fill some of the immediate Project Management functions previously undertaken by East Thames, the Council has directly recruited and appointed a Senior Project Management Officer, based on a temporary 3-year fixed term contract. This is being funded from savings that has been identified through the withdrawal of East Thames and is discussed later in the report.
3. This has given the Council an opportunity to review its approach, based on its experiences over the last 4-years, and to put in place arrangements that could deliver a more efficient service and if possible, de-risk some of the aspects of the programme that have so far resulted in additional costs across schemes that are on site. However, due to a (relatively short) 6-month Exit Management Plan, it was necessary to act quickly taking account of the fact any future appointments would require an EU procurement exercise, which is a lengthy process.
4. Listed below are some of the problems the Council has faced on previous phases, which have led to delays or additional costs to the Council:

- a. Ground Contamination

Issue - Across each site, soil surveys have been undertaken to give an idea of contamination for contractors to base their risk and price accordingly in their tenders. The level of detail has resulted in that risk being understated and Contractors claiming additional costs and time where the contamination was later found to be more extensive. This was particularly the case for Phases 1 & 2.

Way Forward – To undertake a more extensive set of soil surveys and to consult with the Council’s Planning Officers at the earliest opportunity to agree a method statement and soil contamination remediation plan that will satisfy the Planning Conditions allowing these conditions to be discharged prior to the Contractor submitting their costs.

- b. Drainage

Issue – Drainage design is the responsibility of the Contractor under a Design and Build contract. However, connection to local sewers is not always practical due to invert depths, thus resulting in local pumping stations or sewerage treatment stations on sites. This is not only more expensive but could lead to more expensive on-going maintenance liabilities.

Way Forward – To appoint an EU compliant Framework Agreement of Consultant Civil Engineers to undertake a detailed sewer investigation and to fully design the sewerage strategy for each site in advance of appointing the Contractor. This will be done in conjunction with any soil contamination remediation plan.

- c. Foundation Design

Issue – Foundation design is the responsibility of the Contractor under a Design and Build Contract. However, foundation design follows any decision on how to deal with any ground contamination. Since ground contamination has often led to significant variations following more detailed surveys after the Contractors have been appointed, the design of the foundations often changes as a result of the final soil contamination remediation plan being agreed with the Planning Authority.

Way forward – To appoint an EU compliant Framework Agreement of Consultant Structural Engineers to undertake detailed foundation designs taking account of the detailed soil contamination remediation plan and the drainage design.

d. Detailed Design

Issue – Most of the current contracts have been let on a Design and Build basis, whereby the Contractor takes over responsibility for the detailed design from the planning stage design drawings. This has, on occasions, led to changes in the design and layouts of the properties resulting in either the Employers Requirements not being met or additional costs to ensure the Employers Requirements are met.

Way Forward – To appoint an EU compliant Framework Agreement of Consultant Architects to undertake detailed technical drawings up to and including RIBA Stage 3, whereby key aspects of the design can be achieved; including kitchen and bathroom layouts, as well as room sizes. This Framework would be used also to undertake future feasibility studies and to take forward sites to the planning stage.

e. Selection of Contractors and Fixed Price Tenders

Issue – The Council has had difficulty identifying suitable, competent and willing Contractors to tender for works that are spread over multiple sites, for example, some of the larger developers were not interested in low value contracts (sub £5m) and SME Contractors had very little experience in Design and Build Contracts.

When tenders have been sought, they have been based on a fixed price Design and Build Contract. When the problems described above have surfaced, the onus has been on the Contractors Design team to remedy the problem, and in most cases resulting in delays and increased costs.

Way Forward – To appoint an EU compliant Framework Agreement of Contractors based on a two stage tender to allow early appointment of a preferred partner, prior to the completion of all the information required to enable them to offer a fixed price. In the first stage, tenders are sought based on overheads, prelims and profit, whilst seeking preliminary views on phasing, programme, site management, opportunities to drive improved efficiency. Selected parties are then invited to participate in Stage Two, having undertaken the detailed design in a collaborative manor amongst the Project Team, after which the schemes are priced to form a fixed price.

f. Employers Agents

Issue – For each of the phases already let, the Council has relied on the Employers Agents appointed by East Thames as the Development Agents. This has led to a less responsive service as any issues raised would have to go via the Development Agents and sometimes the communication broke down.

Since the current Employers Agents, Pellings LLP, were appointed by East Thames directly, the Council would need to appoint its own Employers Agents

in any case. This would require an EU procurement exercise due to the overall value of the fee.

Way Forward – For Phases 4 onwards, to appoint an EU compliant Framework of Employers Agents with whom the Council would work directly with. This would allow a better working relationship and a better understanding of the Council's needs and expectations.

g. Site Supervision

Issue – Site supervision has not presented itself as a particular issue. However, this essential role has previously been undertaken by East Thames directly. Since they are terminating their contract it will be necessary to directly appoint a Clerk of Works to undertake all client site supervision functions.

Way forward – To seek quotes from suitable organisations that provide Clerk of Works Services and to engage their services on a frequency to suit the progress of building works.

5. To assist with this, the Council has appointed Cameron Consulting to undertake the specialist EU Procurement exercise to pull together the framework of various Consultants and Contractors. Their appointment was approved by the Housing Portfolio Holder in November 2017. The programme for appointing the various specialists should be completed by May 2018, which will enable the Council to pick up the 24 x Phase 4-6 sites and progress them as quickly as possible.
6. In order to maintain continuity for the sites currently in progress, it is recommended that Pellings LLP, who are currently in contract with East Thames and (for which the Council has a Collateral Warranty in place) be novated to Epping Forest District Council and the existing building contracts be amended to remove reference to East Thames, based on advice from the Council Legal Services.
7. It should be noted that based on the fees paid to East Thames, which were agreed following a competitive tender exercise, there will be an overall saving of £550,000 to the Council should Pellings LLP be appointed directly to complete the schemes currently on site (Phases 1-3 inclusive) by novating the contract on their current terms.

Resource Implications

The Council will benefit from a saving of £550,000 should Pellings LLP be appointed directly to complete the schemes currently on site (Phases 1-3 inclusive) by novating the contract on their current terms.

The cost of appointing the Framework Consultants will be determined once the tenders are received and presented to the Cabinet Committee for approval in due course.

Legal and Governance Implications

EU Procurement Rules dictate that any contract for works with a value in excess of £4,104,394 for works and £106,047 for Services must be tendered in accordance with European Procurement legislation.

The Council has its own set of Procurement Rules, which refers all contracts in excess of EU thresholds must be procured in accordance with European Procurement legislation.

Safer, Cleaner and Greener Implications

None

Consultation Undertaken

None relevant at this stage

Background Papers:

- Previous reports to the Cabinet Committee on procurement options in July 2013 and January 2016
- The Council's Development Strategy

Risk Management

There is a comprehensive risk register that has been compiled and is being monitored in respect of the house-building programme. Each risk, where appropriate has a risk mitigation action plan.

Advantages and disadvantages have highlighted risks throughout the body of the report.

Equality Analysis

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to this report.